

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

RECEIVED

BRANDON LANDRUM,

Plaintiff,

v.

DELTA INTERNATIONAL
MACHINERY CORPORATION,
LANDRUM INSTALLATION, and
DEFENDANTS 1-15,

Defendants.

* Case Number:

2008 FEB 26 A 10:13

U.S. DISTRICT COURT
1:08-CV-140-WKW

DEFENDANT DELTA INTERNATIONAL
MACHINERY CORPORATION'S MOTION TO
STRIKE PLAINTIFF'S FIRST SET OF INTERROGATORIES

Defendant Delta International Machinery Corporation ("Delta Machinery"), by and through its counsel, and pursuant to Rule 26(d) of the *Federal Rules of Civil Procedure*, moves this Court to enter an Order striking Plaintiff's First Set of Interrogatories to Defendant Delta Machinery. In support of its motion, Defendant Delta Machinery states as follows:

1. Plaintiff served with the Complaint in this case his First Set of Interrogatories to Defendant Delta Machinery on February 1, 2008.
2. These discovery requests are improper under Rule 26(d) of the *Federal Rules of Civil Procedure*. Rule 26(d) states that, in federal court, "[e]xcept in categories of proceedings exempted from initial disclosures under Rule 26(a)(1)(E), or when authorized under these rules or by order or agreement of the parties, a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f).]" Fed. R. Civ. P. 26(d).
3. This case does not meet any of the exceptions provided in Rule 26(a)(1)(E). Further, this Court has not authorized and the parties have not agreed to allow discovery before

the parties have met and conferred under Rule 26(f).

4. Because the parties have not held their discovery planning conference as required by Rule 26(f), Plaintiff's First Set of Interrogatories to Defendant Delta Machinery are premature under the *Federal Rules of Civil Procedure*. These requests are, therefore, due to be stricken.

WHEREFORE, Defendant Delta Machinery requests this Court enter an Order striking Plaintiff's First Set of Interrogatories to Delta Machinery.

Respectfully submitted,



JOSEPH P.H. BABINGTON (BABIJ7938)
ANNIE L. DIKE (DIKEA6170)
Attorneys for Defendant Delta International
Machinery Corporation

OF COUNSEL:
HELMING, LEACH, HERLONG,
NEWMAN & ROUSE
POST OFFICE BOX 2767
MOBILE, ALABAMA 36652
(251) 432-5521
(251) 432-0633 (fax)

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing upon all parties to this cause, or their attorney of record, by placing same in the United States Mail, postage prepaid, and addressed to their regular mailing addresses, or by hand delivery, as follows:

S. Mark Andrews
MORRIS, CARY, ANDREWS,
TALMADGE & DRIGGERS
Post Office Box 1649
Dothan, Alabama 36302

this 25th day of February, 2008.



OF COUNSEL